

48A C.J.S. Judges § 17

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Judges

Joseph Bassano, J.D.; Khara Singer-Mack, J.D.; Thomas Muskus, J.D.; Karl Oakes, J.D. and Jeffrey J. Shampo, J.D.

I. In General

B. Nature, Creation, Regulation, and Abolition of Office in General

§ 17. Creation and regulation

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The office of judge may be created directly by the constitution, or by statutory provision if the power is delegated to the legislature, or by the governor or local authorities if permitted by the constitution or the legislature.

The right to hold the office of judge, from whatever source that right is derived, depends on the existence of the office.¹ The office of judge may be created directly by the constitution,² or by statutory provision, provided the power is delegated to the legislature.³ The office of judge may also be provided for by constitutional or statutory provisions which permit the governor⁴ or local authorities acting for cities, counties, townships, and other municipalities⁵ to create the office. However, local authorities cannot create the office of judge in the absence of constitutional or statutory permission.⁶ Additionally, judges generally do not have statutory or inherent authority to create a judicial office and make indefinite appointments to such offices.⁷

Where the power to create the office of judge is given to local authorities, such permission must be clearly granted.⁸ Establishment by local authorities of a court with a certain number of judges, in accordance with statute, is, however, proper.⁹ The exercise of the power to create the office must be in accordance with the constitution¹⁰ or the statutes¹¹ pursuant to which creation of the office is authorized.

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Footnotes

- 1 Or.—*State ex rel. Wernmark v. Hopkins*, 213 Or. 669, 326 P.2d 121 (1958).
As to the definition of judges de jure and de facto, see §§ 8, 9.
- 2 Mo.—*Musser v. Coonrod*, 496 S.W.2d 8 (Mo. 1973).
- 3 Mass.—*Opinion of the Justices*, 370 Mass. 886, 352 N.E.2d 673 (1976).
Implicit in establishment of courts
Tex.—*Jordan v. Crudgington*, 149 Tex. 237, 231 S.W.2d 641 (1950).
Act of establishing municipal court creates office of magistrate
N.J.—*Krieger v. Jersey City*, 27 N.J. 535, 143 A.2d 564 (1958).
- 4 La.—*State ex rel. Saint v. Toups*, 95 So. 2d 55 (La. Ct. App. 1st Cir. 1957).
- 5 Minn.—*State v. Pauly*, 257 Minn. 41, 99 N.W.2d 889 (1959).
- 6 Cal.—*County of Madera v. Superior Court*, 39 Cal. App. 3d 665, 114 Cal. Rptr. 283 (5th Dist. 1974).
- 7 Ga.—*Hicks v. State*, 231 Ga. App. 552, 499 S.E.2d 341 (1998) (overruled on other grounds by, *Lewis v. McDougal*, 276 Ga. 861, 583 S.E.2d 859 (2003)).
- 8 N.M.—*Stout v. City of Clovis*, 1932-NMSC-073, 37 N.M. 30, 16 P.2d 936 (1932).
- 9 Minn.—*State v. Pauly*, 257 Minn. 41, 99 N.W.2d 889 (1959).
- 10 Mich.—*Eason v. Secretary of State*, 90 Mich. App. 392, 282 N.W.2d 332 (1979).
- 11 Ohio—*State ex rel. Leis v. Board of Elections of Hamilton County*, 28 Ohio St. 2d 7, 57 Ohio Op. 2d 64, 274 N.E.2d 560 (1971).
As to the validity of statutes conferring judicial powers on judges, as distinguished from courts, generally, see § 144.